

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1988

Introduced by Assembly Member Davis

February 23, 2012

An act to amend Section 435 of add Chapter 7.5 (commencing with Section 52190) to Part 28 of Division 4 of Title 2 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 1988, as amended, Davis. Pupils: English learners.

(1) Existing law, which is inoperative, defines “pupils of limited English proficiency” as those who do not have the clearly developed English language skills of comprehension, speaking, reading, and writing necessary to receive instruction only in English at a level substantially equivalent to pupils of the same age or grade whose primary language is English. Existing law requires each school district that has one or more pupils who are English learners and, to the extent required by federal law, each county office of education and each charter school to assess the English language development of each of those pupils upon initial enrollment in order to determine the level of proficiency of those pupils, and thereafter to assess each of those pupils annually until the pupil is redesignated as English proficient.

The inoperative Chacon-Moscone Bilingual-Bicultural Education Act of 1976 contains provisions regarding the identification criteria and allocation formulas that existing law requires to be used for funding purposes. One of the inoperative provisions requires a school district to ascertain the total number of pupils of limited English proficiency within the district and classify them according to their primary

language, age, and grade level. This count is known as the “census of pupils of limited English proficiency” and consists of a determination of the primary language of each pupil enrolled in the school district and an assessment of the language skills of all pupils whose primary language is other than English. Another of the inoperative provisions requires a school district to report annually to the State Department of Education certain information regarding English learners.

This bill would define “pupils of limited English proficiency” as pupils who speak English as their primary language, have limited proficiency in standard English, and come from home environments where the absence of standard English or academic English spoken by their parents or primary caregivers has a significant impact on their level of English language proficiency. The bill would require a school district to complete a “census of pupils of limited standard English proficiency” that would consist in part of a determination of the language proficiency of these pupils and a diagnostic assessment of their language skills. The bill would require the results of this census to be reported to the State Department of Education, which would report this information to the State Board of Education along with the specialized learning programs in which those pupils are enrolled. The bill would require a school district to establish reclassification criteria to determine when these pupils have developed the language skills necessary to succeed in regular classroom instruction. The requirements regarding the census, assessments, and reclassification criteria would impose a state-mandated local program on school districts.

The bill would require the Superintendent of Public Instruction to review existing assessment tests of language development and to determine if any meet specified requirements. If no suitable test exists, the bill would authorize the Superintendent, with approval of the state board, to contract to modify an existing test to meet the specified requirements. The bill would require the test to be used to identify pupils who are limited English proficient, to determine their level of English proficiency, and to assess their progress in acquiring the skills of listening, reading, speaking, and writing standard English.

The bill would authorize the governing board of a school district to consider the use of any structured English language development instructional materials in reading, writing, speaking, and comprehension if the district documents the lack of available and appropriate materials, personnel, and training programs to address, at every grade level, the needs of all standard English learners. The bill would require the

department to maintain a list of available English language development curriculum materials to ensure that school districts are provided with as many high-quality standards-aligned instructional material options as possible. The bill would authorize a school district to request an instructional materials waiver and would require the waiver request to be signed by the chairperson of the English language arts committee of the school district.

The bill would authorize the department to use specified funds to implement this act.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The English Learner and Immigrant Pupil Federal Conformity Act requires a local educational agency to provide instructional services to limited-English-proficient pupils and immigrant pupils in conformity with specified provisions of federal law. Existing law defines the term “English learner” and other terms for purposes of these provisions.~~

~~This bill would make technical, nonsubstantive changes to the definitions provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to accomplish
- 2 all of the following:
- 3 (a) Shine a spotlight on the achievement gap and allow for
- 4 schools and school districts to provide locally tailored solutions
- 5 to the problems causing the achievement gap.
- 6 (b) Provide a high-quality English language diagnostic
- 7 assessment that is aligned to the California common core state
- 8 standards and to support the development and use of high-quality
- 9 assessments that are aligned with college- and career-ready
- 10 standards to better determine whether pupils have acquired the
- 11 skills they need for success. The diagnostic assessment system will

1 better capture skills, provide more accurate measures of pupil
2 growth, and better inform classroom instruction to respond to
3 academic needs.

4 (c) Provide for an initial assessment of standard English
5 language development to help identify pupils as standard English
6 learners who need to develop their listening, speaking, reading,
7 and writing skills.

8 (d) Provide for an annual assessment to be given to pupils who
9 are identified as standard English learners to see how well they
10 are developing their listening, speaking, reading, and writing skills
11 in English. The results of the annual assessment will be used, along
12 with other information, to help monitor each pupil's progress
13 toward proficiency in standard English.

14 (e) Provide flexibility by supporting state and local innovation
15 aimed at increasing the quality of instruction and improving pupil
16 achievement and the opportunity to innovate and develop locally
17 tailored solutions to the unique educational challenges of every
18 school district, school, and pupil.

19 (f) Provide schools with large achievement gaps the ability to
20 adopt research-based interventions to close the gap while
21 increasing overall pupil achievement, ensuring the success of all
22 pupils, especially those who are farthest behind.

23 SEC. 2. (a) The Legislature recognizes that existing curricular
24 tools may not be sufficient or are inadequate in promoting the
25 academic success of standard English learners and that this
26 population of pupils needs more explicit support to address the
27 academic deficits that often emerge as a result of their language
28 barriers.

29 (b) The Legislature recognizes that for English language arts
30 there may be a shortage of structured English language
31 development textbooks, curriculum, and teacher training programs.

32 (c) The Legislature recognizes that educators need more
33 capacity to collaborate and adjust instruction to meet the needs
34 of pupils.

35 (d) Therefore, it is the intent of the Legislature to allow school
36 districts to request a waiver regarding the use of instructional
37 materials for limited-English-proficient pupils whose primary
38 language is English.

39 SEC. 3. Chapter 7.5 (commencing with Section 52190) is added
40 to Part 28 of Division 4 of Title 2 of the Education Code, to read:

1 *CHAPTER 7.5. LIMITED-ENGLISH-PROFICIENT PUPILS WHOSE*
2 *PRIMARY LANGUAGE IS ENGLISH*

3
4 52190. *Unless the context otherwise requires, the definitions*
5 *set forth in this section shall govern the construction of this*
6 *chapter.*

7 (a) *“Basic skills” means mathematics and language arts,*
8 *including, but not limited to, reading and writing.*

9 (b) *“Content standards” means the specific academic*
10 *knowledge, skills, and abilities that all public schools in this state*
11 *are expected to teach and all pupils are expected to learn in each*
12 *of the core curriculum areas, at each grade level tested.*

13 (c) *“Curriculum” means an outline of the components of a given*
14 *course of study designed to provide state direction to school*
15 *districts in the provision of instructional programs.*

16 (d) *“Diagnostic assessment” means assessments of the current*
17 *level of proficiency of a pupil that serves both of the following*
18 *purposes:*

19 (1) *The identification of particular academic standards or skills*
20 *a pupil has or has not yet achieved.*

21 (2) *The identification of possible reasons that a pupil has not*
22 *yet achieved particular academic standards or skills.*

23 (e) *“District board” means the governing board of a school*
24 *district.*

25 (f) *“Instructional materials” means all materials that are*
26 *designed for use by pupils and their teachers as a principle*
27 *learning resource and to help pupils to acquire facts, skills, or*
28 *opinions or to develop cognitive processes. Instructional materials*
29 *may be printed or nonprinted, and may include textbooks,*
30 *technology-based materials, other educational materials, and tests.*

31 (g) *“Primary language” is the language the pupil first learned*
32 *or the language that is spoken in the pupil’s home.*

33 (h) *“Pupils of limited English proficiency” are pupils who speak*
34 *English as their primary language, have limited proficiency in*
35 *standard English, and come from home environments where the*
36 *absence of standard English or academic English spoken by their*
37 *parents or primary caregivers has a significant impact on their*
38 *level of English language proficiency. The challenge in speaking,*
39 *reading, writing, or comprehending the English language structure*
40 *may deny these individuals the ability to meet California’s*

1 *proficient level of achievement on annual primary language*
2 *proficiency assessments. The determination of which pupils are*
3 *pupils of limited English proficiency shall be made in accordance*
4 *with the procedures specified in Section 52196.*

5 52191. (a) *Each school district shall ascertain not later than*
6 *the first day of March of each year the total number of pupils of*
7 *limited English proficiency, as defined in Section 52190, within*
8 *the district, and shall classify them according to their primary*
9 *language, age, and grade level. This count shall be known as the*
10 *“census of pupils of limited standard English proficiency” and*
11 *shall consist of a determination of the standard English proficiency*
12 *of each pupil enrolled in the school district and a diagnostic*
13 *assessment of the English language skills of all pupils whose*
14 *primary language is English.*

15 (b) *The census shall be taken by individual, actual count, and*
16 *not by estimates or samplings. All pupils of limited English*
17 *proficiency and special education pupils shall be counted. Special*
18 *language assessment instruments, designated by the Superintendent*
19 *and in compliance with the requirements of subdivision (j) of*
20 *Section 56001, may be used for special education pupils. The*
21 *results of this census shall be reported to the department not later*
22 *than April 30 of each year. The previous census shall be updated*
23 *to include new enrollees and to eliminate pupils who are no longer*
24 *pupils of limited English proficiency and pupils who no longer*
25 *attend school in the district, and shall be reported pursuant to*
26 *Section 52192.*

27 52192. *The Superintendent, with the approval of the state*
28 *board, shall prescribe census-taking methods, applicable to all*
29 *school districts in the state, which shall include, but need not be*
30 *limited to, the following:*

31 (a) *A determination of the primary language of each pupil*
32 *enrolled in the school district. The primary language of new pupils*
33 *shall be determined as they enroll. Once determined, the primary*
34 *language need not be redetermined unless the parent or guardian*
35 *claims there is an error. Home language determinations are*
36 *required only once, unless the results are disputed by a parent or*
37 *guardian.*

38 (b) *An assessment of the language skills of all pupils whose*
39 *primary language is English. The speaking, reading, writing, and*
40 *comprehension of the English language structure shall be assessed,*

1 *except that reading and writing skills need not be assessed for*
2 *pupils in kindergarten and grades 1 and 2. For those pupils who,*
3 *on the basis of oral language proficiency alone, are clearly limited*
4 *English proficient, assessment of reading and writing skills shall*
5 *be necessary only to the extent required by subdivision (c). This*
6 *assessment, which shall be made as pupils enroll in the district,*
7 *shall determine the level of proficiency for each pupil.*

8 *(c) (1) A diagnostic assessment in English measuring speaking,*
9 *comprehension, reading, and writing shall be administered for*
10 *instructional use at the district level. This diagnostic assessment*
11 *shall be updated as necessary to provide the needs of each pupil*
12 *of limited English proficiency.*

13 *(2) The diagnostic assessment process shall be completed within*
14 *90 days after the date of the pupil's initial enrollment and shall*
15 *be performed in accordance with rules and regulations adopted*
16 *by the state board.*

17 *(3) The parent or guardian of the pupil shall be notified of the*
18 *results of the assessment. The department shall conduct an*
19 *equivalency study of all language proficiency tests designated for*
20 *the identification of pupils of limited English proficiency to ensure*
21 *uniformity of language classifications and to ensure the reliability*
22 *and validity of the tests. Tests, materials, and procedures to*
23 *determine proficiency shall be selected to meet psychometric*
24 *standards and administered so as not to be racially, culturally, or*
25 *sexually discriminatory.*

26 *(4) The department shall annually evaluate the adequacy of,*
27 *and designate, the instruments to be used by school districts, and*
28 *these instruments shall be available by March 15 of each year.*

29 *(5) The assessments shall be conducted by persons who are*
30 *adequately trained and prepared to evaluate cultural and ethnic*
31 *factors, and who shall follow procedures formulated by the*
32 *Superintendent to determine which pupils are pupils of limited*
33 *English proficiency, as defined in Section 52190. A school district*
34 *may require that the assessment be conducted by persons who hold*
35 *a valid, regular California teaching credential and who meet the*
36 *other qualifications specified in this paragraph.*

37 *52193. The department shall review the results of the census*
38 *each year. If the information provided by a school district appears*
39 *to be inaccurate or if parents, teachers, or counselors file a formal*
40 *written complaint that the census is inaccurate, the department*

1 shall audit the district's census. If the department concludes that
2 the census was incorrectly taken, or the results appear to be
3 inaccurate, the department shall require another census to be
4 taken and the corrected information to be provided.

5 52194. Pertinent information from the assessment of language
6 skills for each pupil whose primary language is English shall be
7 retained by the school district as long as the pupil is enrolled in
8 the district. Each school district shall report annually to the
9 department, and the department shall report to the state board,
10 the following data:

11 (a) The number of pupils whose primary language is English.

12 (b) The number of pupils who are of limited English proficiency.

13 (c) The number of pupils whose primary language is English
14 and who are enrolled in classes, including, but not limited to,
15 specialized learning programs similar to English language
16 mainstream.

17 (d) The number of pupils who have met the language
18 reclassification criteria for exit criteria pursuant to Section 52195.

19 52195. (a) Reclassification criteria shall be established by
20 each school district in which pupils of limited English proficiency
21 are enrolled. The criteria shall determine when pupils of limited
22 English proficiency have developed the language skills necessary
23 to succeed in regular classroom instruction. The reclassification
24 process, at a minimum, shall utilize multiple criteria, including,
25 but not limited to, all of the following:

26 (1) Teacher evaluation, including a review of the pupil's
27 curriculum mastery.

28 (2) Objective assessment of language proficiency and reading
29 and writing skills.

30 (3) Parental opinion and consultation.

31 (4) An empirically established range of performance in basic
32 skills based on nonminority English-proficient pupils of the same
33 grade and age, which demonstrates that the pupil is sufficiently
34 proficient in English to succeed in a regular instructional setting.

35 (b) The state board shall adopt regulations setting forth
36 standards for language reclassification criteria to be adopted by
37 school districts. The state board's regulations, at a minimum, shall
38 prescribe a reclassification process that utilizes multiple criteria
39 as required by this section.

1 (c) In following the state board's regulations, each school
2 district shall establish criteria for determining when pupils of
3 limited English proficiency enrolled in programs designed to
4 address their specific language needs have developed the English
5 language skills of comprehension, speaking, reading, and writing
6 necessary to succeed in a regular instructional setting.

7 52196. (a) (1) The Superintendent shall review existing tests
8 that assess the English language development of pupils whose
9 primary language is English. The tests shall include, but not be
10 limited to, an assessment of achievement of these pupils in English
11 reading, speaking, and written skills. The Superintendent shall
12 determine which tests, if any, meet the requirements of subdivisions
13 (b) and (c). If any existing test or series of tests meet these criteria,
14 the Superintendent, with approval of the state board, shall report
15 to the Legislature on its findings and recommendations.

16 (2) If no suitable test exists, the Superintendent shall explore
17 the option of a collaborative effort with other states to develop a
18 test or series of tests and share test development costs. If no
19 suitable test exists, the Superintendent, with approval of the state
20 board, may contract to develop a test or series of tests that meet
21 the criteria of subdivisions (b) and (c) or may contract to modify
22 an existing test or series of tests so that it will meet the
23 requirements of subdivisions (b) and (c).

24 (3) The Superintendent and the state board shall release a
25 request for proposals for the development of the test or series of
26 tests required by this subdivision. The state board shall select a
27 contractor or contractors for the development of the test or series
28 of tests required by this subdivision, to be available for
29 administration during the 2013–14 school year.

30 (4) The Superintendent shall apportion funds appropriated to
31 enable school districts to meet the requirements of subdivision (d).
32 The state board shall establish the amount of funding to be
33 apportioned per test administered, based on a review of the cost
34 per test.

35 (5) An adjustment to the amount of funding to be apportioned
36 per test is not valid without the approval of the Director of Finance.
37 A request for approval of an adjustment to the amount of funding
38 to be apportioned per test shall be submitted in writing to the
39 Director of Finance and the chairpersons of the fiscal committees
40 of both houses of the Legislature with accompanying material

1 justifying the proposed adjustment. The Director of Finance is
2 authorized to approve only those adjustments related to activities
3 required by statute. The Director of Finance shall approve or
4 disapprove the amount within 30 days of receipt of the request and
5 shall notify the chairpersons of the fiscal committees of both houses
6 of the Legislature of the decision.

7 (b) (1) The test or series of tests developed or acquired pursuant
8 to subdivision (a) shall have sufficient range to assess pupils in
9 grades 2 to 12, inclusive, in English listening, speaking, reading,
10 and writing skills. Pupils in kindergarten and grade 1 shall be
11 assessed in English listening and speaking, once an assessment is
12 developed. The early literacy assessment shall be administered
13 for a period of three years beginning after the initial administration
14 of the assessment or until July 1, 2013, whichever occurs first. Six
15 months after the results of the last administered assessment are
16 collected, but no later than January 1, 2014, the department shall
17 report to the Legislature on the administration of the kindergarten
18 and grade 1 early literacy assessment results, as well as on the
19 administrative process, in order to determine whether
20 reauthorization of the early literacy assessment is appropriate.

21 (2) In the development and administration of the assessment
22 for pupils in kindergarten and grade 1, the department shall
23 minimize any additional assessment time, to the extent possible.
24 To the extent that it is technically possible, items that are used to
25 assess listening and speaking shall be used to measure early
26 literacy skills. The department shall ensure that the test and
27 procedures for its administration are age and developmentally
28 appropriate. Age and developmentally appropriate procedures for
29 administration may include, but are not limited to, one-on-one
30 administration, a small group setting, and orally responding or
31 circling a response to a question.

32 (c) The test or series of tests shall meet all of the following
33 requirements:

34 (1) Provide sufficient information about pupils at each grade
35 level to determine levels of proficiency ranging from no English
36 proficiency to fluent English proficiency with at least two
37 intermediate levels.

38 (2) Have psychometric properties of reliability and validity
39 deemed adequate by technical experts.

1 (3) *Be capable of administration to pupils with English as a*
2 *primary language.*

3 (4) *Be capable of administration by classroom teachers.*

4 (5) *Yield scores that allow comparison of the growth of a pupil*
5 *over time, can be tied to readiness for various instructional options,*
6 *and can be aggregated for use in the evaluation of program*
7 *effectiveness.*

8 (6) *Not discriminate on the basis of race, ethnicity, or gender.*

9 (7) *Be aligned with California common core standards for*
10 *English language arts adopted by the state board.*

11 (8) *Be age and developmentally appropriate for pupils.*

12 (d) *The test shall be used for the following purposes:*

13 (1) *To identify pupils who are limited English proficient.*

14 (2) *To determine the level of English language proficiency of*
15 *pupils who are limited English proficient.*

16 (3) *To assess the progress of limited-English-proficient pupils*
17 *in acquiring the skills of listening, reading, speaking, and writing*
18 *in standard English.*

19 (e) (1) *A pupil in any of grades 3 to 12, inclusive, shall not be*
20 *required to retake those portions of the test that measure English*
21 *language skills for which he or she has previously tested as*
22 *advanced within each appropriate grade span, as determined by*
23 *the department in accordance with paragraph (8) of subdivision*
24 *(c).*

25 (2) *Notwithstanding paragraph (1), a pupil in any of grades 10*
26 *to 12, inclusive, shall not be required to retake those portions of*
27 *the test that measure English language skills for which he or she*
28 *has previously tested as early advanced or advanced.*

29 (3) *This subdivision shall not be implemented unless and until*
30 *the department receives written documentation from the United*
31 *States Department of Education that implementation is permitted*
32 *by federal law.*

33 52197. *A district board may consider the use of any structured*
34 *English language development instructional materials in reading,*
35 *writing, speaking, and comprehension if a district documents the*
36 *lack of available and appropriate materials, personnel, and*
37 *training programs to address, at every grade level, the needs of*
38 *all standard-English learners. The department shall maintain a*
39 *list of available English language development curriculum*
40 *materials consistent with English language development standards*

1 and teacher training programs to ensure that school districts are
2 provided with as many high-quality standards-aligned instructional
3 material options as possible, so that educators may have many
4 rigorous options in choosing the best materials that meet the needs
5 of all pupils, including English-only pupils, English learners, and
6 pupils with disabilities, and that ensure that their pupils are able
7 to master the academic content standards adopted by the state
8 board pursuant to Section 60605.8. If necessary, an instructional
9 materials waiver can be requested. The waiver is renewable yearly.
10 Each waiver request shall be signed by the chairperson of the
11 English language arts committee of the school district.

12 52198. The department shall use federal carryover funds
13 received pursuant to Title I of the federal No Child Left Behind
14 Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and any other available
15 state and federal funds, to implement this chapter.

16 SEC. 4. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.

21 ~~SECTION 1. Section 435 of the Education Code is amended~~
22 ~~to read:~~

23 ~~435. For purposes of this chapter, the following terms have the~~
24 ~~following meanings:~~

25 ~~(a) “English learner” or “pupil of limited English proficiency”~~
26 ~~means a pupil who was not born in the United States, whose native~~
27 ~~language is a language other than English, or who comes from an~~
28 ~~environment where a language other than English is dominant,~~
29 ~~and whose difficulties in speaking, reading, writing, or~~
30 ~~understanding the English language may be sufficient to deny the~~
31 ~~individual the ability to meet the state’s proficient level of~~
32 ~~achievement on state assessments, the ability to successfully~~
33 ~~achieve in classrooms where the language of instruction is English,~~
34 ~~or the opportunity to participate fully in society.~~

35 ~~(b) “Federal No Child Left Behind Act of 2001” means Public~~
36 ~~Law 107-110 (20 U.S.C. Sec. 6801 et seq.).~~

37 ~~(c) “Immigrant pupil” means a pupil who was born in a country~~
38 ~~other than the United States and who has attended a kindergarten~~

- 1 ~~class or any of grades 1 to 12, inclusive, in a school in the United~~
- 2 ~~States for three or fewer years.~~

O